IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE THIRTY FIRST DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HONOURABLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.21556 of 2003

Between:

The Mahboob College Multipurpose Higher Secondary School @ Mehboob College High School, Rep.by its Hon.Secretary Dr.A.Vidyarani, Secunderabad

...PETITIONER

AND

1. The Municipal Corporation of Hyderabad, rep.by its Commissioner,
   MCH Building, Adjacent to BRKR Bhavan,
   Basheeer Bagh Hyderabad.

2. The City Planner, MCH-Secunderabad, Town Planning Section,
   Secunderabad Zone, Secunderabad.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, Order or direction particularly one in the nature of a Writ of Mandamus declaring the action of the respondents in demolishing the compound wall of the petitioner for road widening without following the procedure prescribed under Section 147 of the Hyderabad Municipal Corporation Act, 1955 or the Land Acquisition Act, 1894 as illegal, arbitrary and violative of Articles 14 and 300 A of the Constitution of India and consequently direct the respondents not to demolish the compound wall of the petitioner's premises at S.D.Road and R.P.Road, Secunderabad any further and to restore status quo ante as regards the portion of wall already demolished.

Counsel for the Petitioner: MR.M.KRISHNA MOHAN RAO

Counsel for the Respondents: Smt.G.JYOTHI KIRAN

The Court made the following:

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ORDER:

The Mehboob College Multipurpose Higher Secondary School, Secunderabad seeks a Writ of Mandamus declaring the action of the Municipal Corporation of Hyderabad (Corporation) in demolishing the compound wall of the petitioner for road widening without following the procedure prescribed under Section 147 of the Hyderabad Municipal Corporation Act, 1955 ('the Act' for brevity) or the Land Acquisition Act, 1894, as illegal, arbitrary and violative of Article 14 of the Constitution of India. A consequential direction is also sought directing the respondents not to demolish the compound wall of the petitioner's premises. This Court admitted the Writ Petition on 08.10.2003 and by order made in W.P.M.P.No.26918 of 2003 passed interim orders staying further demolition of the compound wall in question.

The first respondent addressed a letter to the petitioner on 25.03.2003 requesting to hand over 205 square meters of land for the purpose of road widening. It is alleged that even before the petitioner could respond to the said letter, the respondents demolished the structure without the consent of the petitioner and later paid compensation of Rs.78,863/- (Rupees seventy eight thousand eight hundred and sixty three only) for the structure. Again on 02.07.2003, the second respondent addressed a letter to the petitioner requesting consent for handing over advanced possession of 787.40 square meters (944.88 square yards) for the purpose of road widening. In the second letter, the second respondent also agreed to reconstruct alternate compound wall and pay compensation to the effected portion. The petitioner sent a letter dated 13.08.2003 informing the respondents that the Managing Committee decided to accept the proposal conditionally subject to the condition that the Corporation will sanction plans for the proposed construction of school, college and commercial complex. In response thereto, the respondent sent a letter dated 20.08.2003 informing the petitioner that additional FSI for the road widening effected portion will be given as per the Government orders in G.O.Ms.No.483, Municipal Administration, dated 24.08.1998, as and when building application is submitted. However, no commitment was given agreeing the proposal of the petitioner for construction of new commercial complex. Be that as it is, immediately after receiving the letter of the Corporation on 17.09.2003, the petitioner sent a letter bringing to the notice of the Corporation that the consent sent on 13.08.2003 was not in accordance with the decision of the Managing Committee and that the consent given was a conditional consent. However, the Corporation went ahead and demolished the compound wall, at which stage, the present Writ Petition is filed.

The Corporation filed W.V.M.P.No.335 of 2004 praying this Court to vacate the

interim order, dated 08.10.2003. At that stage itself, with the consent of learned counsel for the petitioner and learned standing counsel for the Corporation, the matter was heard finally and being disposed of by this order.

In the counter-affidavit filed by the second respondent, it is stated that the petitioner has given consent to the respondents for handing over effected portion of the road widening and accordingly, the work was taken up. It is further stated that the respondents agreed to give additional FSI to the petitioner as per the above said GO.

The two communications sent by the petitioner on 13.08.2003 and 17.09.2003 would not support the contention of the learned standing counsel for the Corporation that the petitioner gave an unequivocal consent. The consent given is a conditional consent and that the consent may bind the party if it is accepted by the respondent party along with the conditions. In the absence of any such eventuality, it cannot be said that there is an agreement between the parties wherein the petitioner agreed to give up the land enabling the Corporation to widen the road. Therefore, a reasonable inference can be drawn that the petitioner has not given any consent for the purpose of giving advanced possession. In such an event, as held by this Court in ***Srichand Rohra v. Commissioner, Municipal Corporation of Hyderabad***, the Corporation cannot insist on the consent, but they have to resort to the provisions of Section 147 of the Act and acquire the land for the purpose for which the land is required namely road widening. In view of this *fait accompli*, that the Corporation has already demolished the then existing compound wall and laid the road, there cannot be an order prohibiting the Corporation from widening the road. However, a direction shall issue to the Corporation to acquire the land, which is admittedly utilized by the Corporation for widening the road. The submission made by the learned standing counsel that the compound wall was reconstructed at the cost of the Corporation is recorded. The exercise may be completed within a period of six months from today.

The Writ Petition is accordingly disposed of.

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(V.V.S.RAO, J)

31st August 2004

RRB

ASSISTANT REGISTRAR

//True Copy//

SECTION OFFICER

Copy To:

1. The Commissioner, Municipal Corporation of Hyderabad, Commissioner, MCH Building, Adjacent To BRKR Bhavan, Basheeer Bagh Hyderabad.

2. The City Planner, MCH-Secunderabad, Town Planning Section, Secunderabad Zone, Secunderabad.

3. Two CD copies.